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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,027	09/04/2003	Barry Byron	33535/US	8490

7590 02/12/2007  
Christopher R. Hilberg, Esq.  
Dorsey & Whitney LLP  
Intellectual Property Department  
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Minneapolis, MN 55402-1498

EXAMINER
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DESAI, HEMANT

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/656,027	BYRON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hemant M. Desai	3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23,25-33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/18/2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims rejected under 35 U.S.C. 102(b) as being anticipated by Faulls, Jr. (3141221).

Faulls, Jr. discloses a sealing apparatus, comprising an elongated sealing member (12, fig. 3) and an elongated receiver portion (13, fig. 3) having two portions, a closed circumferential portion having a circumference of at least 180° and an opened circumferential portion coupled to the closed circumferential portion, wherein the opened circumferential portion comprises a central opening extending along a length of the receiver portion, and at least one engagement aperture to receive the sealing member, the central opening being bracketed by first and second ridges (see fig. below)

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that extend along the length of the receiver portion, the opening providing access to the engagement aperture, the opened circumferential portion further having lugs (see fig. below), each lug having a proximal and distal end, each of the proximal end and distal end of the lugs arranged along a plane within the opened circumferential portion, the distal end of the lugs projecting generally outwardly from the opened circumferential receiver portion and downwardly in the direction of the opening of the opened circumferential receiver portion, the lugs provided at each location such that the proximal end of each lug is proximate to one of the first and second ridges and spaced apart from the opening, and wherein the proximal end of each of the lugs comprises a connection point to the opened circumferential portion that forms an angle facing the opened circumferential portion that is less than  $180^\circ$ , the lugs providing a gripping surface.

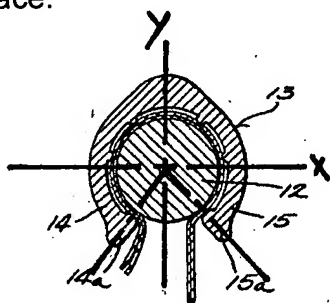


Fig. 2

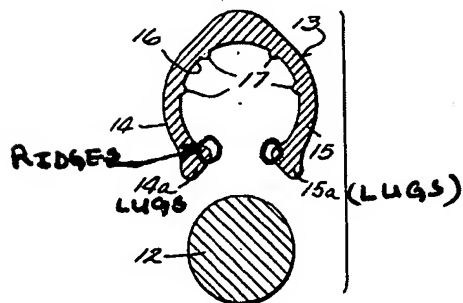


Fig. 3

Regarding claims 25 and 35, wherein the elongated sealing member has a circular cross-section (see figs. 2-3) and the engagement aperture of the receiver portion has an approximately circular cross-sectional shape (see figs. 2-3) that is configured to receive the sealing member.

Regarding claims 29 and 39, the coupling member is flexible that couples the sealing portion to the receiver portion (see col. 2, lines 36-38).

Regarding claims 30-32, 39, the sealing portion (12) and receiving portion (13) are formed of a resilient polymeric material (see col. 2, lines 36-38).

Regarding claim 33, the sealing apparatus of Faulls, Jr., as mentioned above, meets all the claimed limitations of claim 33.

4. Regarding claims 40-42, the Faulls, Jr. (3141221) discloses a method for sealing a bag (see fig. 1) using an apparatus (fig. 1) having an elongated sealing member (12) and an elongated receiver portion (13) having at least one engagement aperture configured to receive the sealing member (see fig. 1), the method comprising positioning a portion of a resealable bag (B, fig. 1) proximate to the engagement aperture, positioning the sealing member proximate to the portion of the resealable bag and the engagement aperture, and pressing the sealing member into the engagement aperture of the receiver portion with the portion of the resealable bag interposed between the sealing member and the receiver portion (see fig.1), which meets all the claimed limitations.

□ □ □ □ □ □ □ □

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Regarding claim 41, positioning a portion of a resealable bag proximate to the engagement aperture further comprises positioning an opening portion of the bag proximate to the engagement aperture (see fig. 1).

Regarding claim 42, pressing the sealing member into the engagement aperture of the receiver portion further comprises closing the resealable bag to form a hermetic seal therein (see fig. 1).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 26 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulls, Jr. in view of U.S. Application No. US 2003/0188510.

Faulls, Jr. meets all the claimed limitations, except for a handle. However, U.S. Application teaches a handle (16, figs. 1-3) to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver) (see page 1, paragraph 3, lines 9-11). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the handle as taught by U.S. Application No. 10/223647 in the bag sealing apparatus of Faulls, Jr. to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver).

6. Claims 27-28 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulls, Jr. in view of Japanese Patent (8-248851).

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Regarding claims 27-28 and 37-38, Faulls, Jr. discloses all the limitations except for a lanyard. However, Japanese Patent teaches that it is well known to provide lanyard (61, fig. 7) coupled to the receiver portion (22, fig. 7) in the bag sealing apparatus. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide lanyard in the bag sealing apparatus of Faulls, Jr. to prevent the lost of either receiver portion or sealing portion and thus to prevent the sealing apparatus from becoming unusable.

The modified sealing apparatus of Faulla, Jr. does not disclose expressly that the lanyard extends through the opening of the sealing portion. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the lanyard through the opening because Applicant has not disclosed that by extending the lanyard through the opening provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the lanyard (61) attached to the sealing portion and receiving portion as disclosed in the modified apparatus of Faulls, Jr. or the claimed lanyard extends through the opening of the sealing portion because both lanyards perform the same function to prevent lost of either the receiving portion or sealing portion and thus to prevent the sealing apparatus form becoming unusable. Therefore, It would have been an obvious matter of design choice to modify the modified Faulls, Jr. to obtain the invention as specified in claims 27-28 and 37-38.

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***Response to Arguments***

7. Applicant's arguments with respect to claims 23, 25-33, 35-42 has been considered but are moot in view of the new ground(s) of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Hemant M. Desai*  
HEMANT M. DESAI  
PRIMARY EXAMINER